

DP No. 1: Senior Legal Counsel

The 2013 Legislature granted one-time only funding for an agency in-house legal counsel. The position was filled in September 2013. This position is critical in order for the office to maintain the current enforcement docket of litigation and settlements, the high number of complaint driven decisions, and advisory opinions.

The COPP receives complaints, and investigates allegations of campaign finance and practice, ethics and lobbying violations. The COPP investigates and issues decisions in these matters. When the COPP finds sufficient evidence of a violation, the matter then moves to in-house counsel for enforcement of the sufficiency findings either through settlement or litigation of the matter. To date, Commissioner Motl has issued 65 decisions, 21 of which were dismissed, and 44 of which have led to enforcement actions involving in-house legal counsel.

In-house legal counsel has brought settlements in matters dating back to 2009 to current. Settling 2 sufficiency findings issued prior to Commissioner Motl's term, 18 from Commissioner Motl's term, with a total of 20 completed settlements. Currently there are three matters in the process of settlement, with negotiation offers pending, and one sufficiency finding out for consideration to a County Attorney.

There are presently 26 sufficiency finding enforcement actions with the Commissioner which have led to litigation in a district court. The COPP has initiated enforcement litigation against nine candidates, and three third party cases in district court. Many of the complaints in district court for enforcement against the candidates have filed counterclaims against the COPP, which include Montana Constitutional and statutory challenges. Additionally, four parties have initiated litigation against the COPP, in Actions for Declaratory Judgment. The COPP also has a current case pending in the 9th Cir. Court of Appeals. The first enforcement action brought by the COPP has been scheduled for trial in May of 2015 (COPP v. Miller). Given the District Court's current docket, it is expected that the trials on the other enforcement actions will be scheduled after May of 2015.

Prior to the funding of the in-house counsel, COPP on average spent more than \$120,000 in contracted legal services. The costs are somewhat less than prior years, with more work being completed in a timely manner. One of the biggest complaints the COPP has faced over the years is the extensive delays in resolution to complaints. This position has aided in the expediency of the complaint resolution and the public has responded favorably. Without this position it would be impossible to maintain the current rate of issuing advisory opinions, completing sufficiency findings, and following through with enforcement through settlement and litigation the sufficiency findings in district court.

### **DP No. 2: Lease Adjustment**

The 2013 Legislature granted funding for an agency move. COPP was unable to locate a site that was small enough or big enough on the Capital campus. Instead, the office split in to two small offices, one for compliance and one for enforcement. The cost for the increased rent has been partially paid with agency move funds. The agency move funds is one-time only. COPP is still searching for a building big enough/small enough to house all staff in one place. We would like to request \$12,000 in funding to cover the additional lease for the second building.

### **DP No. 3: Program/Legal Assistant**

This is a request for a new FTE. This position is primarily a legal assistant. In the past the COPP used contracted services for most legal/enforcement tasks. This position would be responsible for a myriad of tasks including but not limited to; scanning all incoming and outgoing legal documentation including large volumes of discovery documents for electronic files, scanning legal documents to PDF form to be bates stamped using bates software, calendaring court deadlines, continually updating the pleading and discovery case dockets, both hardcopy and electronically, set up pleadings, type in discovery text from opposing counsel into word documents for the COPP to answer, set up and maintaining legal files both hardcopy and electronic, frequent trips to the court to file documents, pick up and/or drop off discovery documentation with opposing counsel, prepare all correspondence and information for process server to serve defendants. Work with process server until all defendants are served. Act as assistant to the Commissioner to prepare both hardcopy and electronic files for complaints, advisory opinions, general letters, SAVA and Legislative files, including scanning of all of the above. Maintain both hardcopy and electronic filing system for complaints and all of the above. Prepare complainant and respondent letters for the Commissioner to sign, prepare certified mail for complainant and respondent and advise respondent of complaint via email. Notify the media via email of any public letters and Decisions as decided by the Commissioner, work with staff to ensure accepted complaints, Decisions and Advisory Opinions are made available on the website. Email all parties a courtesy copy of all decisions on the day they are signed by the Commissioner. Proof read and format all final Decisions for the Commissioner. In addition this FTE would also assist during the busy election season in scanning campaign finance reports, report inspections, fielding phone calls, etc.

Now that COPP has its own legal/enforcement division within the office, the investigator handles many of these tasks. The number of complaints, requests for information, and litigation has increased by 400% in the last decade. It is impossible for the investigator to keep up with the workload for investigations and the legal assistant requirements. Adding this position would increase efficiency, and would allow for quicker public access to the information that the COPP collects.

#### **DP No. 4: Staff Attorney**

The COPP has an existing attorney position and is requesting a second position. The functions and need for this additional position is set out below.

This position would draft formal sufficiency Decisions for review and final preparation and signature by the Commissioner. The sufficiency Decisions are currently being drafted by the Commissioner (who is also a licensed attorney). The current Commissioner, Jonathan Motl, began work on June 10, 2013. During his year of service Commissioner Motl, in the role of a staff attorney, has drafted 65 Decisions responding to 85 complaints of illegal campaign practices. Twenty-one of these Decisions dismissed complaints with the remaining 44 Decisions finding sufficient facts to justify prosecution of a campaign practice violation. A sufficiency Decision runs from 7 to 45 pages in length. A Decision reviews and analyzes known facts, reaching a sufficiency of facts Decision in a manner that cites legal and administrative precedent. All 65 sufficiency Decisions can be accessed on the COPP homepage.

This position would also draft advisory opinions on campaign practice and other issues. The COPP began numbering these opinions in 2014. There have been 11 advisory opinions issued to date in 2014. Advisory opinions run from 3 to 12 pages in length. An advisory opinion is based on a given set of facts from which an analysis of law and precedent is made, leading to an advisory opinion. The Commissioner, in the role of staff attorney currently drafts these advisory opinions. All 2014 advisory opinions can be accessed on the COPP homepage.

This position would also draft informal letters responding to requests for information and advice. These requests come from the public, press and public officials. This task is currently performed by the Commissioner, legal counsel and the program supervisor.

#### *Relationship of Attorney Position Two to Current Legal Counsel and Commissioner.*

The COPP's current legal counsel position is filled by Jaime MacNaughton. MacNaughton enforces those Decisions finding sufficient facts showing a campaign practice violation and also handles litigation brought against the COPP. MacNaughton began work in September of 2013 and has since settled 20 sufficiency Decisions (2 of these were based on Decisions of Commissioners who held office prior to Motl) for civil fines. All settlement documents can be accessed on the COPP homepage. MacNaughton has also initiated enforcement litigation against nine candidates and three third party cases in district court. MacNaughton is also defending on another 5 cases brought against the COPP in district courts. All litigation matters are listed on the COPP homepage according to the Decision being enforced. Finally, MacNaughton reviews and comments on all Decisions and Advisory Opinions.

The Commissioner would work directly with the Attorney two person. The Commissioner would continue to accept and initiate work on all campaign practice complaints. The Commissioner would then review the draft Decision prepared by the Attorney two, as well as comments on the Decision, and prepare the final Decision. This same process would apply to Advisory Opinions and advisory letters. Because the Attorney Two would be drafting these documents, significant Commissioner's time would be saved and the Commissioner would have time to act as Commissioner. The Commissioner's time

would be used to engage in further public speaking, initiate work on updating the COPP administrative rules and address lobbying reporting and rulemaking. These are all tasks the COPP is mandated to perform but currently does not have staff to perform.

**DP No. 5: Accountant**

The COPP currently conducts a surface-only inspection of campaign finance reports under 13-37-121 MCA. The COPP has audit powers it has not used and is not using. These include post-election examination (13-37-123 MCA), general investigative powers under 13-37-111 MCA and lobbying report audit powers under 5-7-212 MCA.

The 2008, 2010 and 2012 election cycles showed that Western Tradition Partnership, along with allied entities, was willing to engage in unreported and undisclosed campaign practices. While the most obvious of these practices have now been identified and challenged by the COPP there remains major issues of nondisclosure and nonreporting that have not yet been addressed. Addressing those issues will require engagement or use of an accountant for the purposes of examination of the books and records of political committees and other entities. The COPP currently has no such accounting expertise. It will be much more cost effective to engage such expertise in-house rather than contract for it.